

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-1215V

Filed: October 5, 2015

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UNPUBLISHED

KELLY A. LOEBIG, *

Special Master Gowen

Petitioner, *

Joint Stipulation on Damages and

V. *

Attorneys' Fees and Costs

SECRETARY OF HEALTH *

Influenza (“Flu”) Vaccine;

AND HUMAN SERVICES, *

Guillian-Barre Syndrome;

Respondent. *

* * * * *

Charles P. Falk, Solomon and Associates, Pittsburgh, PA, for petitioner.

Camille M. Collett, United States Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

On December 18, 2014, Kelly A. Loebig (“petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioner alleged that as a result of receiving an influenza (“flu”) vaccine on or about January 3, 2014, she developed Guillian-Barre Syndrome (“GBS”). Stipulation for an Award ¶ 2, 4, docket no. 19, filed Sep. 30, 2015. Further, petitioner alleged that she experienced residual effects of her injury for more than six months. *Id.* at ¶ 4.

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On September 30, 2015, the parties filed a stipulation in which they state that a decision should be entered awarding compensation. Respondent denies that the flu vaccination caused petitioner's GBS or any other injury or condition. Id. at ¶ 6. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties also stipulate to an award of attorneys' fees and costs in a joint stipulation filed on October 1, 2015. See Stipulation for Fees ¶ 4, docket no. 20, filed Oct. 1, 2015. The parties agree to a total award of attorneys' fees and costs in the amount of \$2,462.30. Id. In accordance with General Order #9, petitioner represents that she personally incurred costs in the amount of \$400.00 related to this proceeding. Id. at ¶ 3. The undersigned also finds the stipulation for fees and costs reasonable and adopts it as the decision of the Court.

The parties stipulate that petitioner shall receive the following compensation:

- 1) **A lump sum of \$90,000.00, in the form of a check payable to petitioner, Kelly A. Loebig. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**
- 2) **A lump sum of \$2,462.30, in the form of a check jointly payable to petitioner and to petitioner's attorney, Charles P. Falk, pursuant to 42 U.S.C. § 300 aa-15(e), for attorneys' fees and costs.**
- 3) **A lump sum of \$400.00, in the form of a check payable to petitioner only, Kelly A. Loebig, pursuant to General Order No. 9.**

The undersigned approves the requested amount for petitioner's compensation and attorneys' fees and costs. Accordingly, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulations.³

IT IS SO ORDERED.

s/ Thomas L. Gowen

Thomas L. Gowen
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KELLY LOEBIG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 14-1215V
Special Master Thomas Gowen
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received the influenza vaccination on or about January 3, 2014.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the influenza vaccine caused her to develop Guillain-Barre Syndrome ("GBS") and that she experienced the residual effects of this condition for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that the influenza immunization is the cause of petitioner's alleged GBS or any other injury or condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$90,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payment described in paragraph 8, and any amount awarded pursuant to paragraph 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the influenza vaccine administered on or about January 3, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about December 18, 2014, in the United States Court of Federal Claims as petition No. 14-1215V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused petitioner's alleged GBS or any other injury or condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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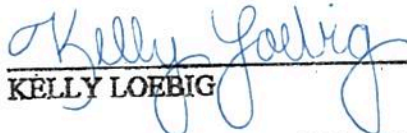
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Respectfully submitted,


PETITIONER:


KELLY LOEBIG


**ATTORNEY OF RECORD FOR
PETITIONER:**


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DATE: 9/30/2015

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

KELLY A. LOEBIG,)	
)	
)	
)	
Petitioner,)	No. 14-1215V
)	Special Master
v.)	Thomas L. Gowen
)	ECF
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION OF FACT CONCERNING FINAL ATTORNEYS' FEES AND COSTS

It is hereby stipulated by and between the parties, the following factual matters:

1. Charles P. Falk, Esq., is the attorney of record for petitioner in this matter.
2. Petitioner submitted a draft final Application for Attorneys' Fees and Costs (Application) to respondent. Therein, petitioner requests \$2,445.00 in attorneys' fees and \$17.30 in attorneys' costs.
3. Pursuant to General Order #9, petitioner represents to respondent that she did advance monies in the amount of \$400.00 for reimbursable costs in pursuit of her claim.
4. The parties now request that a decision awarding final attorneys' fees in the amount of **\$2,462.30**, be issued, payable jointly to petitioner and petitioner's counsel. A separate check payable solely to petitioner should be issued in the amount of **\$400.00**.
6. This Stipulation does not represent an agreement by the parties to the hourly rates of the professionals who worked on this matter, nor a waiver of any objections that respondent may bring in other cases.

Respectfully submitted,

s/CHARLES P. FALK
CHARLES P. FALK
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s/CAMILLE M. COLLETT
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Date: October 1, 2015